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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.333 OF 1989

The Board of Trustees of
the Port of Bombay ... Plaintiff

versus

M/s.Dani Wooltex Corporation
and another ... Defendants

Mr.U.J.Makhija a/w Mr.Parag Khandhar i/by Mulla & Mulla & CBC for plaintiff.

CORAM : A.M.KHANWILKAR, J.

DATE : 03rd September 2007

PC :

1. None appears for the defendants though served. No written statement has been filed as per the office noting. Accordingly, I am proceeding with the matter in exercise of powers under Order VIII, Rule 10 of the Code of Civil Procedure, 1908.

2. In substance, the plaintiff's case is that the first defendant importer/owner/consignee of the consignment imported certain goods. Defendant no.2 is the owner/agent of the vessel

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m.v. "Lakatoi Express" which carried the consignment in question. However, even after intimation of landing given to the defendant no.1, no steps were taken by the first defendant to release the goods. The consignment contained 52 bales said to contain woolen rags which was manifested at Item No.16 in the Import General Manifest No.1059 dated 3rd May 1985 of the vessel m.v."Lakatoi Express". The General Landing date and the last free day of the cargo of the said vessel fell on 3rd May 1985 and 8th May 1985 respectively. As the defendants failed and neglected to apply for and/or to take delivery and/or to remove the consignment which they were bound to do, the consignment incurred port trust charges which the plaintiff is entitled to recover it. It is the plaintiff’s case that the consignment was confiscated by Customs Authorities in exercise of power under section 111(d) of the Customs Act, 1962. The defendants in spite of reminders have not come forward to pay the demurrage, wharfage etc. charges. The correspondence was exchanged between the parties. However, as the amount of demurrage remained unpaid, the plaintiff finally gave legal notice for recovery of the said amount on 5th January 1989 calling upon the defendants to pay a sum of

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Rs.11,62,299=80 Ps. being the pre-confiscation charges in respect of the said consignment for the period from last free day till the date prior to the date of the said confiscation order together with a sum of Rs.37,700=20 paise being interest thereon @ 15% p.a. from 31st October 1988 till 24th January 1989 aggregating to Rs.12,00,000/- which the defendants are bound and liable to pay to the plaintiffs. In spite of legal notice, as the plaintiff did not receive the amount, had no other option but to file present suit for the following reliefs :-

> "(a) that the defendants be ordered and decreed to pay to the plaintiff the sum of Rs.12,00,000/- together with further interest on the sum of Rs.11,62,299=80 paise at the rate of 15% per annum from the date of the suit till payment or realisation and costs of the suit."

3. As mentioned earlier, none appears for the defendants though duly served. No written statement has been filed on the record. On the other hand, the plaintiffs have filed affidavit in lieu of examination-in-chief sworn by Mr.Elias J. Almeida dated 31st August 2007 reiterating the case made out by the plaintiffs in the plaint. The affiant (witness) is present in the Court and made himself available for cross

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examination. However, as none appears for the defendants, there is no question of cross examination of the plaintiff's witness. Besides, the plaintiff has produced the original letters and office copies of correspondence exchanged between the parties in relation to the subject matter in the suit including the legal notice sent to the defendants. The plaintiff has also produced statement of working sheet on the basis of charges receivable by the plaintiffs from the defendants are calculated. From the calculation, at the foot of the account, a total sum of Rs.11,62,299/- is shown as payable by the defendants to the plaintiffs. In that sense the plaintiff has established the case made out in the plaint about the liability of the defendants to pay the principal amount. The next question is whether the defendants are liable to pay interest @ 15% p.a. as calculated by the plaintiff. The plaintiffs are not in a position to produce any document which would indicate that the rate of interest on the delayed payment was agreed between the parties. Indeed, the plaintiff has mentioned the rate of interest in the legal notice. In any case, as the amount receivable by the plaintiff arises out of commercial transaction, the plaintiff, in my

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opinion, may be entitled for interest at the rate of 12% per annum.

4. Accordingly, in exercise of power under Order VIII, Rule 10 of the CPC, 1908, I proceed to pass following order.

5. ORDER :-

A) The defendants are ordered and decreed to pay to the plaintiffs a sum of Rs.11,62,299=80 paise (Rs.Eleven lakh sixty two thousand two hundred ninety nine and paise eighty only) being the principal amount along with interest @12% p.a. from 2nd June 1988 till realisation;

B) The suit is decreed with costs;

C) Decree be drawn up accordingly;

D) Issuance of certified copy is expedited.

(A.M.KHANWILKAR, J.)